

1 GEORGE S. CARDONA
Acting United States Attorney
2 CHRISTINE C. EWELL
Assistant United States Attorney
3 Chief, Criminal Division
JOSEPH O. JOHNS (Cal. Bar No. 144524)
4 Assistant United States Attorney
Chief, Environmental Crimes Section
5 MARK A. WILLIAMS (Cal. Bar No. 239351)
Assistant United States Attorney
6 Environmental Crimes Section
1300 United States Courthouse
7 312 North Spring Street
Los Angeles, California 90012
8 Telephone: (213) 894-4536/3359
Facsimile: (213) 894-6436
9 E-mail: joseph.johns@usdoj.gov
mark.a.williams@usdoj.gov

10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 UNITED STATES OF AMERICA,) Case No. CR _____
16 Plaintiff,)
17 v.) RULE 11(c)(1)(C) SPECIFIED
18) SENTENCE PLEA AGREEMENT FOR
HOTELSAB DOWNTOWN EMPLOYEES LLC,) DEFENDANT HOTELSAB DOWNTOWN
19 dba Standard Hotels,) EMPLOYEES LLC
20 Defendant.) [CLASS A MISDEMEANOR]
21)

22 1. This constitutes the binding plea agreement between
23 HOTELSAB DOWNTOWN EMPLOYEES LLC, doing business as Standard
24 Hotels ("defendant"), and the United States Attorney's Office
25 for the Central District of California ("the USAO") in the
26 above-captioned case. This agreement is limited to the USAO and
27 cannot bind any other federal, state or local prosecuting,
28 administrative or regulatory authorities.

1 2. The parties expressly agree that this Agreement is
2 entered into and is to be controlled by Federal Rule of Criminal
3 Procedure 11(c)(1)(C). The USAO and defendant understand and
4 agree that: (a) if the Court accepts this Agreement, the parties
5 are bound by the terms of the Agreement; and (b) if the Court
6 does not accept this Agreement, any party may withdraw from the
7 Agreement and defendant may withdraw its plea of guilty. The
8 parties request that the Court accept this Agreement at the time
9 of the entry of the guilty plea.

10 PLEA TO INFORMATION

11 3. Defendant agrees to plead guilty to a one-count
12 misdemeanor information ("Information") in the form attached to
13 this agreement or a substantially-similar form.

14 CORPORATE AUTHORIZATION

15 4. Defendant represents that it is authorized to enter
16 into this Agreement. On or before the date of entry of the Plea
17 Agreement, defendant shall provide to the United States and the
18 Court a notarized legal document certifying that defendant, a
19 limited liability company, is authorized to enter into and
20 comply with all of the provisions of this Plea Agreement. Such
21 resolution(s) shall designate a company representative who is
22 authorized to take the actions specified in this Plea Agreement,
23 and shall also state that all legal formalities for such
24 authorizations have been observed.

25 ORGANIZATIONAL CHANGES AND APPLICABILITY

26 5. This Agreement shall bind defendant, its successor
27 entities if any, and any other person or entity that assumes the
28 liabilities contained herein ("successors-in-interest").

1 Defendant, or its successors-in-interest, if applicable, shall
2 provide the USAO and the United States Probation Office for the
3 Central District of California with immediate notice of any name
4 change, business reorganization, sale or purchase of assets,
5 divestiture of assets, or similar action impacting their ability
6 to pay the fine or affecting this Agreement. No change in name,
7 change in corporate or individual control, business
8 reorganization, change in ownership, merger, change of legal
9 status, sale or purchase of assets, or similar action shall
10 alter defendant's responsibilities under this Agreement.
11 Defendant shall not engage in any action to seek to avoid the
12 obligations and conditions set forth in this Agreement.

13 NATURE OF THE OFFENSE

14 6. The parties stipulate and agree that under well-
15 established principles of corporate liability and respondeat
16 superior, as these principles apply in this case, defendant is
17 liable for the actions of its agents and employees. New York
18 Central and Hudson River R.R. v. United States, 212 U.S. 481,
19 495 (1909); United States v. Beusch, 596 F.2d 871, 877 (9th Cir.
20 1979); United States v. Hilton Hotels Corp., 467 F.2d 1000,
21 1004-07 (9th Cir. 1972).

22 7. In order for defendant to be guilty of the sole count
23 of the Information, which charges a violation of 33 U.S.C. §§
24 1311(a), 1319(c)(1)(A) (Negligent Discharge of Pollutants into
25 Waters of the United States), the following must be true: (1)
26 defendant negligently discharged pollutants, namely chlorine and
27 muriatic acid; (2) from a point source, namely a storm drain;
28 (3) into a tributary of waters of the United States; (4) without

1 a permit. Defendant admits that defendant is, in fact, guilty
2 of this offense as described in the Information.

3 PENALTIES

4 8. The statutory maximum sentence that the Court can
5 impose for a violation of 33 U.S.C. §§ 1311(a), 1319(c)(1)(A),
6 is: a one-year term of imprisonment; a five-year term of
7 probation or a one-year term of supervised release; a fine of
8 not less than \$2,500, but not more than \$200,000 or twice the
9 gross gain or gross loss resulting from the offense, whichever
10 is greatest; and a mandatory special assessment of \$125.

11 PAYMENT OF FINE, COMMUNITY SERVICE, AND RESTITUTION

12 9. Defendant and the USAO agree that a criminal fine of
13 \$200,000 (two hundred thousand dollars) is appropriate in this
14 case pursuant to United States Sentencing Guidelines section
15 5E1.2 and 18 U.S.C. § 3553(a). The criminal fine shall be paid
16 in full by a cashier's check (or equivalent) immediately upon
17 sentencing and shall be made payable to the Clerk of the United
18 States District Court. In addition, the defendant and the USAO
19 agree that defendant shall pay \$150,000 (one hundred fifty
20 thousand dollars) as a community service payment as set forth
21 below in paragraphs 19 and 20.

22 10. Defendant understands and agrees that defendant will
23 be required to pay full restitution to the Los Angeles County
24 Fire Department Health Hazardous Materials Division and the City
25 of Los Angeles Watershed Protection Division for costs incurred
26 in responding to, sampling, cleaning up, and analyzing the
27 discharge of the pollutants at issue in this matter. The
28 parties agree that the applicable total amount of restitution is

1 \$20,283.56 (\$8,491.58 to the Fire Department, and \$11,791.98 to
2 the Watershed Protection Division). Defendant further agrees
3 that defendant will not seek the discharge this obligation, in
4 whole or in part, in any present or future bankruptcy
5 proceeding. Defendant further agrees to pay the restitution
6 listed above immediately upon sentencing.

7 11. Defendant understands and agrees that any special
8 assessments, restitution, costs, and fines imposed by the Court
9 as a part of defendant's sentence are due and payable
10 immediately upon sentencing.

11 SUSPENSION/REVOCATION/DEBARMENT

12 12. Defendant understands that if defendant holds any
13 regulatory licenses or permits, the convictions in this case may
14 result in the suspension or revocation of those licenses and
15 permits. By this Agreement, the USAO makes no representation or
16 promise concerning suspension or debarment of defendant from
17 contracting with the United States or with any office, agency,
18 or department thereof. Suspension and debarment of
19 organizations convicted under various federal environmental
20 protection and criminal statutes is a discretionary
21 administrative action solely within the authority of the federal
22 contracting agencies.

23 FACTUAL BASIS

24 13. Defendant and the USAO agree and stipulate to the
25 statement of facts provided below. This statement of facts is
26 sufficient to support a plea of guilty to the charge described
27 in this agreement. It is not meant to be a complete recitation
28 of all facts relevant to the underlying criminal conduct or all

1 facts known to either party that relate to that conduct.

2 a. The Standard Hotel in downtown Los Angeles,
3 California ("the Standard Hotel"), is managed and operated by
4 defendant. On or about January 18, 2009, a maintenance employee
5 at the Standard Hotel negligently disposed of chlorine and
6 muriatic acid that were located near the hotel's rooftop pool.
7 Both of these chemicals were "pollutants" as that term is
8 defined in the Clean Water Act ("CWA"). The maintenance
9 employee accomplished the disposal by pumping both chemicals
10 into the Standard Hotel's rooftop storm drain. At all relevant
11 times, maintenance employee was acting within the course and
12 scope of his employment.

13 b. The rooftop storm drain at the Standard Hotel
14 ultimately leads to the Los Angeles River, a tributary of the
15 Pacific Ocean which is a "water of the United States" under the
16 CWA.

17 c. At no time did defendant, or any other person or
18 entity, have a permit authorizing the disposal of the chlorine
19 and muriatic acid into the storm drain at the Standard Hotel.

20 d. The parties agree that nothing in this agreement
21 shall affect the applicability of the CWA or the Resource
22 Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., to the
23 actions taken by any employees of the Standard Hotel who were
24 involved in the disposal discussed above.

25 WAIVER OF CONSTITUTIONAL RIGHTS

26 14. By pleading guilty, defendant gives up the following
27 rights:

28 a. The right to persist in a plea of not guilty.

1 b. The right to a speedy and public trial by jury.

2 c. The right to the assistance of legal counsel at
3 trial, including the right to have the Court appoint counsel for
4 defendant for the purpose of representation at trial. (In this
5 regard, defendant understands that, despite his plea of guilty,
6 he retains the right to be represented by counsel -- and, if
7 necessary, to have the court appoint counsel if defendant cannot
8 afford counsel -- at every other stage of the proceeding.)

9 d. The right to be presumed innocent and to have the
10 burden of proof placed on the government to prove defendant
11 guilty beyond a reasonable doubt.

12 e. The right to confront and cross-examine witnesses
13 against defendant.

14 f. The right, if defendant wished, to testify on
15 defendant's own behalf and present evidence in opposition to the
16 charges, including the right to call witnesses and to subpoena
17 those witnesses to testify.

18 g. The right not to be compelled to testify, and, if
19 defendant chose not to testify or present evidence, to have that
20 choice not be used against defendant.

21 By pleading guilty, defendant also gives up any and all
22 rights to pursue any affirmative defenses, Fourth Amendment or
23 Fifth Amendment claims, and other pretrial motions that have
24 been filed or could be filed.

25 SENTENCING FACTORS

26 15. Defendant understands that the Court is required to
27 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
28 including the kinds of sentence and sentencing range established

1 under the United States Sentencing Guidelines ("U.S.S.G." or
2 "Sentencing Guidelines"), in determining defendant's sentence.
3 Defendant further understands that the Sentencing Guidelines are
4 advisory only, and that after considering the Sentencing
5 Guidelines and the other § 3553(a) factors, the Court may be
6 free to exercise its discretion to impose any reasonable
7 sentence up to the maximum set by statute for the crime of
8 conviction.

9 SENTENCING AGREEMENT

10 16. Pursuant to Federal Rule of Criminal Procedure
11 11(c)(1)(C), the USAO and defendant agree that a \$200,000
12 criminal fine, a \$150,000 community service payment, and
13 restitution in the amount of \$20,283.56 represent an appropriate
14 sentence in this case. Pursuant to U.S.S.G. §§ 8D1.1 and 8D1.2
15 and the factors set forth in 18 U.S.C. § 3553(a), including the
16 nature and circumstances of the offense and the history and
17 characteristics of the defendant, the need for the sentence
18 imposed to reflect the seriousness of the offense, to promote
19 respect for the law, to provide just punishment for the offense,
20 and to afford adequate deterrence to criminal conduct, defendant
21 shall be sentenced as follows:

22 a. Defendant shall pay a criminal fine of \$200,000 as
23 to the count of conviction. The criminal fine shall be paid by
24 a cashier's check (or equivalent) payable to the Clerk of the
25 United States District Court immediately upon sentencing.

26 b. Defendant shall pay \$150,000 for use in community
27 service as provided below in paragraphs 19 and 20.

28 c. Defendant agrees to pay to the Clerk of the

1 United States District Court on the date of sentencing (or as
2 soon as the Court is able to accept the payment) the mandatory
3 special assessment of \$125 pursuant to 18 U.S.C.
4 § 3013(a)(1)(B)(iii).

5 d. Defendant agrees to pay restitution in the total
6 amount of \$20,283.56 as follows: \$8,491.58 to the Los Angeles
7 County Fire Department Health Hazardous Materials Division, and
8 \$11,791.98 to the City of Los Angeles Watershed Protection
9 Division. Such restitution shall be made by certified check or
10 equivalent and delivered to the USAO. Defendant further agrees
11 that defendant will not seek the discharge of any restitution
12 obligation, in whole or in part, in any present or future
13 bankruptcy proceeding.

14 17. Pursuant to FRCP 32(c)(1)(A)(ii), the parties request
15 that the Court waive the preparation of a presentence report in
16 this matter. The parties further request that the Court
17 sentence defendant at the time the guilty plea to the
18 Information is entered

19 18. In the event that the Court defers acceptance or
20 rejection of this specified sentence plea until it has reviewed
21 the presentence report in this case, pursuant to Federal Rule of
22 Criminal Procedure 11(c)(3)(A), both defendant and the USAO are
23 free to: (a) supplement the facts stipulated to in this
24 Agreement by supplying relevant information to the United States
25 Probation Office and the Court; and (b) correct any and all
26 factual misstatements relating to the calculation of the
27 sentence.

28 COMMUNITY SERVICE

1 19. The parties agree that defendant shall pay \$150,000
2 toward community service pursuant to section 8B1.3 of the
3 Sentencing Guidelines and in furtherance of the sentencing
4 principles provided for under 18 U.S.C. § 3553(a). The explicit
5 goal of defendant's required community service is to fund
6 environmental projects, enforcement efforts, and initiatives
7 designed for the enforcement of environmental and public safety
8 regulations, and the benefit, preservation, and restoration of
9 the environment and ecosystems in the Central District of
10 California. These projects and initiatives are to include, but
11 are not limited to, the following: monitoring, studying,
12 restoring, and preserving fish, wildlife, and plant resources;
13 monitoring, studying, cleaning up, remediating, sampling, and
14 analyzing pollution and other threats to the environment and
15 ecosystem; researching, studying, training, planning, repairing,
16 maintaining, educating, and providing public outreach relating
17 to the environment and ecosystem; and enforcing environmental,
18 public safety, and wildlife protection laws. Accordingly,
19 defendant agrees that within 12 months of the date defendant is
20 sentenced, defendant shall pay a total of \$150,000 to the
21 National Fish and Wildlife Fund pursuant to instructions to be
22 provided by the USAO.

23 20. Defendant agrees that because the payments listed
24 above are community service by an organization, it will not seek
25 any reduction in its tax obligations as a result of such
26 community service payment. Defendant further agrees that
27 because these payments shall be made pursuant to this Agreement,
28 it will not characterize, publicize, or refer to the payment as

1 anything other than a community service payment.

2 DEFENDANT'S OBLIGATIONS

3 21. Defendant agrees that it will:

4 a. Plead guilty as set forth in this agreement.

5 b. Not knowingly and willfully fail to abide by all
6 sentencing stipulations contained in this agreement.

7 c. Not knowingly and willfully fail to: (i) appear
8 for all court appearances; (ii) surrender as ordered for service
9 of sentence; (iii) obey all conditions of any bond; and (iv)
10 obey any other ongoing court order in this matter.

11 d. Not commit any crime; however, offenses which
12 would be excluded for sentencing purposes under U.S.S.G. §
13 4A1.2(c) are not within the scope of this agreement.

14 e. Not knowingly and willfully fail to be truthful
15 at all times with Pretrial Services, the U.S. Probation Office,
16 and the Court.

17 f. Pay the applicable special assessment at or
18 before the time of sentencing unless defendant lacks the ability
19 to pay and submits a completed financial statement (form OBD-
20 500) to the USAO prior to sentencing.

21 g. Pay the applicable fine and restitution at or
22 before the time of sentencing.

23 THE USAO'S OBLIGATIONS

24 22. If defendant complies fully with all of defendant's
25 obligations under this Agreement, the USAO agrees to abide by
26 all sentencing stipulations contained in this Agreement.

27 ///

28 BREACH OF AGREEMENT

1 23. If defendant, at any time after the execution of this
2 agreement, knowingly violates or fails to perform any of
3 defendant's agreements or obligations under this agreement ("a
4 breach"), the USAO may declare this agreement breached. If the
5 USAO declares this agreement breached at any time following its
6 execution, and the Court finds such a breach to have occurred,
7 then: (a) if defendant has previously entered a guilty plea,
8 defendant will not be able to withdraw the guilty plea; and (b)
9 the USAO will be relieved of all of its obligations under this
10 agreement.

11 24. Following the Court's finding of a knowing and willful
12 breach of this agreement by defendant, should the USAO elect to
13 pursue any charge that was either dismissed or not filed as a
14 result of this agreement, then:

15 a. Defendant agrees that any applicable statute of
16 limitations is tolled between the date of defendant's signing of
17 this agreement and the commencement of any such prosecution or
18 action.

19 b. Defendant gives up all defenses based on the
20 statute of limitations, any claim of pre-indictment delay, or
21 any speedy trial claim with respect to any such prosecution,
22 except to the extent that such defenses existed as of the date
23 of defendant's signing this agreement.

24 c. Defendant agrees that: (i) any statements made by
25 defendant, under oath, at the guilty plea hearing (if such a
26 hearing occurred prior to the breach); (ii) the stipulated
27 factual basis statement in this agreement; and (iii) any
28 evidence derived from such statements, are admissible against

1 defendant in any such prosecution of defendant, and defendant
2 shall assert no claim under the United States Constitution, any
3 statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f)
4 of the Federal Rules of Criminal Procedure, or any other federal
5 rule, that the statements or any evidence derived from any
6 statements should be suppressed or are inadmissible.

7 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

8 25. Defendant gives up the right to appeal any sentence
9 imposed by the Court, including any order of restitution, fine,
10 or community service, and the manner in which the sentence is
11 determined, provided that the sentence is that agreed to in
12 paragraph 16 above. Defendant also gives up any right to bring
13 a post-conviction collateral attack on the conviction or
14 sentence, including any order of restitution, fine, or community
15 service, except a post-conviction collateral attack based on a
16 claim of ineffective assistance of counsel, a claim of newly
17 discovered evidence, or an explicitly retroactive change in the
18 applicable sentencing statutes or statutes of conviction.
19 Notwithstanding the foregoing, defendant retains the ability to
20 appeal the conditions of probation imposed by the court, with
21 the exception of the standard conditions set forth in district
22 court General Orders 318 and 01-05.

23 26. The USAO gives up its right to appeal any sentence
24 imposed by the Court, including any order of restitution, fine,
25 or community service, provided that the sentence is that agreed
26 to in paragraph 16 above.

27 ///

28 SCOPE OF AGREEMENT

1 27. This Agreement applies only to crimes committed by
2 defendant. It has no effect on any proceedings against
3 defendant not expressly mentioned herein, and shall not preclude
4 any past, present, or future forfeiture actions or other civil
5 or criminal actions.

6 28. This Agreement does not prevent the USAO from
7 prosecuting any individual or other organization for any
8 offense, including the offenses charged in the Information.

9 COURT NOT A PARTY

10 29. The Court is not a party to this agreement and need
11 not accept any of the USAO's sentencing recommendations or the
12 parties' stipulations.

13 NO ADDITIONAL AGREEMENTS

14 30. Except as set forth herein, there are no promises,
15 understandings or agreements between the USAO and defendant or
16 defendant's counsel. Nor may any additional agreement,
17 understanding or condition be entered into unless in a writing
18 signed by all parties or on the record in court.

19 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

20 31. The parties agree and stipulate that this Agreement
21 will be considered part of the record of defendant's guilty plea
22 hearing as if the entire Agreement had been read into the record
23 of the proceeding.

24 ///

25
26
27 ///

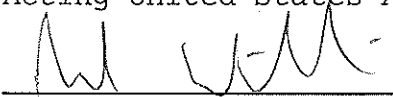
28 This agreement is effective upon signature by defendant and

1 an Assistant United States Attorney.

2 AGREED AND ACCEPTED.

3 UNITED STATES ATTORNEY'S OFFICE
4 FOR THE CENTRAL DISTRICT OF CALIFORNIA

5 GEORGE S. CARDONA
6 Acting United States Attorney

7 
8 MARK A. WILLIAMS
9 JOSEPH O. JOHNS
10 Assistant United States Attorneys
11 Environmental Crimes Section
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3-19-10
Date

///

///

As an authorized representative of defendant HOTELSAB

1 DOWNTOWN EMPLOYEES LLC, I have read this Agreement and carefully
2 discussed every part of it with defendant's attorney. I
3 understand the terms of this Agreement, and I voluntarily agree
4 to those terms. Defendant's attorney has advised me of
5 defendant's rights, of possible defenses, of the sentencing
6 factors set forth in 18 U.S.C. § 3553(a), of the Sentencing
7 Guideline provisions, and of the consequences of entering into
8 this Agreement. No promises or inducements have been made to me
9 or defendant other than those contained in this Agreement. No
10 one has threatened or forced me or defendant in any way to enter
11 into this Agreement. Finally, I am satisfied with the
12 representation provided by defendant's attorney in this matter.

13
14 
15 SIGNATURE OF AUTHORIZED REPRESENTATIVE

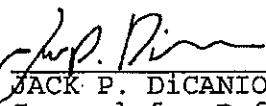
14 3/15/10
15 Date

15 Name: Andrew Balazs
16 Title: CEO
17

18 AUTHORIZED REPRESENTATIVE
19 Defendant HOTELSAB DOWNTOWN EMPLOYEES LLC,
20 doing business as Standard Hotels

21 I am defendant HOTELSAB DOWNTOWN EMPLOYEES LLC's attorney.
22 I have carefully discussed every part of this Agreement with the
23 authorized representative of defendant whose signature appears
24 above as well as the appropriate officers and directors of
25 defendant. Further, I have fully advised the authorized
26 representative of defendant's rights, of possible defenses, of
27 the sentencing factors set forth in 18 U.S.C. § 3553(a), of the
28 Sentencing Guidelines' provisions, and of the consequences of
entering into this Agreement. To my knowledge, the decision of

1 defendant and its authorized representatives to enter into this
2 Agreement is an informed and voluntary one.

3
4 
5 JACK P. DICANIO
6 Counsel for Defendant
HOTELSAB DOWNTOWN EMPLOYEES LLC
doing business as Standard Hotels

3.22.10
Date